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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,449	06/27/2003	Rafael Carbunaru	AB-233U1	6613

23845 7590 04/18/2006

ADVANCED BIONICS CORPORATION
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EXAMINER

FAULCON JR, LENWOOD

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/609,449	CARBUNARU ET AL.	
	Examiner	Art Unit	
	Lenwood Faulcon, Jr.	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed February 2, 2006, have been fully considered but they are not persuasive.
2. In response to applicant's argument that the Brownlee et al. reference does not teach of both an antenna/charging coil that is used to inductively charge the rechargeable batter with the implanted stimulator and to transcutaneously communicate with the stimulator, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Examiner takes the position that the charging coil (L1) as taught by Brownlee et al. is inherently capable of communicating with the implanted stimulator/pacemaker (10), by transmitting control signals, as an example of communicating. Further, Examiner notes that Applicant has not positively claimed a communication circuit and a charge circuit, as structural limitations; therefore, a charging coil as taught by Brownlee et al. meets the structural limitations of claim 1 and is inherently capable of communicating with the implanted pacemaker in addition to inductively charging the rechargeable battery of the implanted pacemaker.

Claim Rejections - 35 USC § 102

3. Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Brownlee et al. (U.S. Patent No. 4,134,408) as applied above and in the previous Office Action of October 3, 2005.

Claim Rejections - 35 USC § 103

4. Claims 2 and 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee et al. (U.S. Patent No. 4,134,408) as applied to claim 1 above, in view of Griffith (U.S. Patent No. 6,073,050) as applied in the previous Office Action of October 3, 2005.

5. Claims 4-26 and 29-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee et al. (U.S. Patent No. 4,134,408) as applied to claim 1 above, and further in view of Kung (U.S. Patent No. 6,212,430) and Seelye (U.S. Patent No. 5,642,030) as applied in the previous Office Action of October 3, 2005.

6. Claims 27 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee et al. (U.S. Patent No. 4,134,408) in view of Kung (U.S. Patent No. 6,212,430) and Seelye (U.S. Patent No. 5,642,030) as applied to claims 4-26 and 29-43 above, and further in view of Griffith (U.S. Patent No. 6,073,050) as applied to claims 2 and 3 above.

7. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee et al. (U.S. Patent No. 4,134,408) in view of Kung (U.S. Patent No. 6,212,430) and Seelye (U.S. Patent No. 5,642,030) as applied to claims 4-26 and 29-43 above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barreras (U.S. Patent No. 5,769,877), Sun et al. (U.S. Patent No. 5,861,019), Richmond et al. (U.S. Patent No. 6,061,596), Kuiper (U.S. Patent No. 6,148,235), Schulman et al. (U.S. Patent No. 6,164,284), Kung (U.S. Patent No. 6,366,817), Kung (U.S. Patent No. 6,400,991), Andrews (U.S. 2002/0055779), Schulman et al. (U.S. 2003/0078634), Cameron et al. ("Micromodular Implants to Provide Electrical Stimulation of Paralyzed Muscles and Limbs," IEEE Transactions on Biomedical Engineering, Vol. 44, No. 9, Sept. 1997, pages 781-790).

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-

Art Unit: 3762

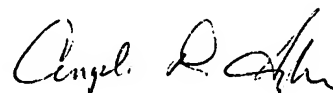
272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.



Angela Sykes

Supervisory Examiner

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700